

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MEYNARD DESIGNS, INC. AND
EARTH, INC.

Plaintiffs and
Counterclaim-Defendants,

v.

EARTH PRODUCTS INC.

Defendant and
Counterclaim-Plaintiff.

EARTH PRODUCTS INC.

Third-Party Plaintiff and
Counterclaim-Defendant,

v.

PLANET, INC.

Third-Party Defendant and
Counterclaim-Plaintiff.

CIVIL ACTION NO. 05 cv 11781 NMG

JOINT MOTION TO EXTEND VARIOUS DEADLINES

Due to the Parties' desire to hold further negotiations in an effort to settle the case, the Parties have encountered scheduling difficulties with the discovery and trial deadlines as previously set.

Specifically, the Court's previously set deadline for the close of fact discovery was August 31, 2007. By stipulation (D.I. # 53), the Parties previously requested that the discovery deadline be delayed until December 15, 2007. The parties have recently decided to negotiate face-to-face at the end of November 2007 in an attempt to settle this litigation. Arranging this

settlement meeting has involved finding a common date for principals on both sides, who all have other prior commitments, as well as gathering all necessary parties at a common location, which will require travel of persons from California and the State of Washington.

The currently stipulated December 15, 2007 deadline for the close of fact discovery does not provide sufficient time after the November negotiation, should it prove unsuccessful, for the Parties to complete the depositions and discovery that are still outstanding.

Accordingly, the Parties have conferred and respectfully request that the Court enter new discovery and trial deadlines as follows:

Deadline	Current Date	Date Proposed in D.I. # 53	New Proposed Date
Close of Fact Discovery	August 31, 2007	December 15, 2007	January 25, 2007*
Referral to ADR	Late September	Late December	Early February, 2008
Expert Reports (for subjects on which the party bears the burden of proof)	September 30, 2007	December 10, 2007	January 21, 2008
Rebuttal Expert Reports	October 31, 2007	January 15, 2008	February 26, 2008
Dispositive Motions	November 30, 2007	February 1, 2008	March 14, 2008
Oppositions to Dispositive Motions	none	February 22, 2008	April 4, 2008
Replies Supporting Dispositive Motions	none	March 7, 2008	April 18, 2008

* As noted in D.I. #53, the Parties have agreed that the deadline for serving upon the Parties document requests, requests for admissions and interrogatories is passed and not re-opened by this stipulation. The Parties have also agreed that the deadline for serving subpoenas to third parties for documents has passed. The Parties have completed their document production and privilege logs, except that document productions and privilege logs can be supplemented through the close of fact discovery should documents unknown to the attorneys for any party before October 1, 2007 be discovered thereafter. In addition, depositions of any witnesses and supplementation of any discovery responses may occur through the proposed close of fact discovery.

Deadline	Current Date	Date Proposed in D.I. # 53	New Proposed Date
Pretrial Conference	March 12, 2008	June 12, 2008 (or other date convenient to the Court)	July 24, 2008 [†] (or other date convenient to the Court)
Trial	April 7, 2008	July 7, 2008 (or other date convenient to the Court)	August 18, 2008 (or other date convenient to the Court)

As can be seen above, the proposed deadlines are extended by approximately six weeks, to reflect the additional discovery time required if the case is not settled as a result of the November negotiations. The Parties have previously requested an extension of various deadlines (D.I. # 53). However, it is believed that the current extension is necessary to address the scheduling concerns of the Parties and their attorneys. Further, the Parties do not believe they will have sufficient time to attempt to settle this case, or complete discovery if settlement discussions fail, without the extension requested above.

On a related scheduling issue, the Parties acknowledge damages in this case may well be resolved without judicial intervention, after a ruling on the merits. The parties thus stipulate and request the Court bifurcate damages according to the following proposal: after a ruling as to liability, there will be a brief discovery period to take damages discovery and then, if the matter is not resolved during the discovery period, a brief trial as to damages.

On a third scheduling issue, there are several pending motions for which opposition briefs are due over the next several weeks. In order to limit unnecessary expense of resources by the parties in briefing, and by the Court in deciding, motions that might be rendered moot should the

[†] The Parties would prefer to avoid the expense of trial preparation if dispositive motions that could resolve the dispute or narrow the issues for trial are pending. Therefore, as an alternative to the dates proposed for pre-trial conference and trial, the Parties would be amenable to a schedule that sets the pre-trial conference and trial for some period of days after the ruling on all dispositive motions.

settlement discussions prove successful at the end of November, the parties stipulate to and request the Court enter an Order for the following extensions on opposition brief deadlines for pending motions:

Pending Motion	Current Deadline for Opposition Brief	Proposed Deadline for Opposition Brief
D.I. # 77: <i>Earth Products Inc.'s Motion for Partial Summary Judgment that Plaintiff Meynard Designs, Inc. Abandoned the Trade Associated with the "Earth" and "Earth Shoe" Marks</i>	November 19, 2007	December 6, 2007
D.I. # 74: <i>Meynard Designs, Inc.'s Motion to Strike Earth Products' Motion for Partial Summary Judgment [D.I. # 62]</i>	November 23, 2007	December 13, 2007

Accordingly, through the undersigned counsel, the Parties stipulate to the schedule proposed above and move that the Court (1) amend the scheduling order to reflect those proposed deadlines; (2) bifurcate damages until after a ruling on liability in the case; and (3) allow oppositions to pending motions D.I. # 77 and 74 on the schedule proposed above.

Respectfully submitted,

/s/ Hunter Keeton

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Dated: November 14, 2007

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

USDJ, United States District Court

Certificate of Service

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

/s/ Hunter Keeton